

No. 42125-9-II

Al

**IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION II**

**ARTHUR WEST.
appellant**

Vs.

**ROB McKENNA, at al,
respondents**

**ON APPEAL FROM THE RULINGS OF
THE HONORABLE JUDGE PAULA CASEY**

APPELLANT'S EXPURGATED OPENING BRIEF

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SUMMARY OF ARGUMENT

This is an appeal of an Order dismissing action for an injunction and a declaratory ruling in regard to I-1053, an unconstitutional initiative that was designed to alter the Constitution of the State of Washington and interfere with the provision of essential State functions.

Despite the clear and uncontested allegations of injury in fact and the threat of future harm, the Court improperly applied an impossible standard of standing designed to bar citizen access to justice, even when necessary to preserve the integrity and continuity of State programs and services directly impacting the plaintiff.

In addition, the Court erred in applying the wrong standard when the controversy was a matter of statewide and overriding importance to commerce, trade, and industry, and concerned the conduct of public officers requiring a determination by the Court.

Under the remedial provisions of Washington's Uniform Declaratory Judgments Act, a person whose rights, status, or other legal relations are affected by a statute may have any question concerning the construction of that statute determined by the court. *Branson v. Port of Seattle*, 152 Wn.2d 862, 877, 101 P.3d 67 (2004).

Specifically, RCW 7.24.020 reads, in part, as follows:

A person . . . whose rights, status or other legal relations are affected by a statute,...may have determined any question of construction or validity arising under the... statute,... and obtain a declaration of rights, status or other legal relations thereunder.

In accord with the intent of the Legislature, the Supreme Court has determined that **the UDJA is to be liberally construed and is designed to clarify uncertainty** with respect to rights, status, and other legal relations. *DiNino v. State* , 102 Wn.2d 327 , 330, 684 P.2d 1297 (1984).

Such liberal construction is especially necessary when the issues concern matters of broad importance involving trade, industry and commerce, as is evident by the broad impact of the restrictions of I-1053 on the State of Washington and its specific impacts upon the appellant.

The Court erred in failing to act in conformity with the remedial intent of the UDJA and the constitutional responsibility of the judiciary to resolve an existing controversy involving the separation of powers and an unconstitutional enactment.

Appellant asserts that I-1053, which requires a legislative super majority for tax increases, also impermissibly alters the balance of power between the Legislature, the People and the Governor, is not a lawful exercise of initiative powers by the people independent of the Legislature,

as required by the State Constitution. I-1053 became effective on December 2, 2010.

I-1053 violates Article II, Section 22 of the Constitution of the State of Washington that "No bill shall become law unless on its final passage the vote be taken as to yeas and nays, ... and a majority of the members elected to each house be recorded thereon as voting in its favor." , that the Initiative violates the separation of powers and Article III, section 12 of the Constitution, that the initiative violates the guarantee of a the republican form of government, and that the initiative was not a lawful exercise of the people's reserved initiative power **independent of the legislature** as required by Article II, Section 1 of the Constitution, but was instead an attempt by special interests and politicians to impermissibly dictate the functions of the legislature and and executive and to encroach into the independent power of initiative reserved to the people for the purpose of interfering with essential State functions.

In addition, as demonstrated by the intent section (section I) of I-1053 as written and applied, I-1053 violates Article VII, section 7, that..."The power of taxation shall never be suspended, surrendered or contracted away."

It is clear from the explicit text of the initiative, as well as Mr. Eyman's open and notorious public pronouncements, and the public remarks of the Governor on February 16, 2011, that I-1053 was designed to, and has the effect of, a suspension of the power of taxation.

As demonstrated below, the effects of I-1053 were not only specific to the appellant to create an injury in fact, but are so widespread and far reaching and impact so many diverse facets of State and local government that the specific and adverse material impact of I-1053 upon both the appellant and many other citizens of this State cannot reasonably be denied.

The court's Order was inconsistent with the pleadings on file in this case, demonstrating specific adverse impact upon the appellant, which the defendants failed to deny or refute, as well as the remedial nature of the UDJA that was designed to remedy the very type of uncertainty posed by an unconstitutional law. As the Legislature expressly declared, RCW 7.24 is a remedial statute.

ASSIGNMENTS OF ERROR

I THE COURT ERRED IN DENYING STANDING WHEN UNCONTESTED ALLEGATIONS AND PLAINTIFF’S USE OF STATE PARKS, SERVICES, AND HIGHWAYS DEMONSTRATED AN INJURY IN FACT FAIRLY TRACEABLE TO THE IMPACTS OF I-1053, THAT WAS LIKELY TO BE REDRESSED BY A FAVORABLE DECISION

II THE COURT ERRED IN FAILING TO LIBERALLY CONSTRUE THE UNIFORM DECLARATORY JUDGMENTS ACT IN ACCORD WITH ITS REMEDIAL INTENT TO RESOLVE AN EXISTING CONTROVERSY OF SUBSTANTIAL PUBLIC IMPORTANCE

III THE COURT ERRED IN DENYING PLAINTIFF'S STANDING WHEN A LESS STRINGENT TEST WAS APPLICABLE, WHEN PARTICULAR INJURY HAD BEEN DEMONSTRATED, AND IN GRANTING A MOTION ON THE PLEADINGS WHEN APPELLANT'S ALLEGATIONS AND UNCONTESTED MOTION FOR SUMMARY JUDGMENT ESTABLISHED A CAUSE OF ACTION....

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

I DID THE COURT ERR IN DENYING STANDING WHEN UNCONTESTED ALLEGATIONS AND PLAINTIFF’S USE OF STATE PARKS, SERVICES, AND HIGHWAYS DEMONSTRATED AN INJURY IN FACT FAIRLY TRACEABLE TO THE IMPACTS OF I-1053, THAT WAS LIKELY TO BE REDRESSED BY A FAVORABLE DECISION?.....

II DID THE COURT ERR IN FAILING TO LIBERALLY CONSTRUE THE UNIFORM DECLARATORY JUDGMENTS ACT IN ACCORD WITH ITS REMEDIAL INTENT TO RESOLVE AN EXISTING CONTROVERSY OF SUBSTANTIAL PUBLIC IMPORTANCE ?.....

III DID THE COURT ERR IN DENYING PLAINTIFF'S STANDING WHEN A LESS STRINGENT TEST WAS APPLICABLE, WHEN PARTICULAR INJURY HAD BEEN DEMONSTRATED, AND IN GRANTING A MOTION ON THE PLEADINGS WHEN APPELLANT'S ALLEGATIONS AND UNCONTESTED MOTION FOR SUMMARY JUDGMENT ESTABLISHED A CAUSE OF ACTION?.....

STATEMENT OF THE CASE

1. This case stems from the adoption of I-1053. (CP 61)

2. I-1053 alters the constitutional function of the State Executive and Legislature by requiring a super majority vote to increase taxes, in violation of Article II, section 22 of the Constitution of the State of Washington, which prescribes that laws are to be passed by a simple majority vote. (CP at 20-21, 24-28)

3. I-1053 also alters the requirements of Article III, section 12 by requiring the Governor to sign any such tax increases in violation of the separation of powers implicit in Article III, and in violation of the separate powers of the legislature to pass legislation over a gubernatorial veto. (CP at 20-21, 24-28)

4. I-1053 also violates the constitutional limitation on initiative powers that the power of initiative be exercised by the people **independent** of the legislature, since the initiative was supported and co-sponsored by the Honorable Legislators Shea, Benton and Roach, and was apparently a product of republican and corporate policy makers.(CP at 20-21, 24-28)

5. Republican legislators, the Association of Washington Business, as well as large Corporations such as British Petroleum, Tesoro, JP Morgan Chase, and the Green Diamond Resource Co. supported and financed the

initiative in a manner that was not an independent act of the people of the State of Washington.(CP at 5-6

6. By obstructing public oversight of the initiative process, and/or duplicitously evading the disclosure of signatures and ballot certification process, Tim Eyman and Sam Reed have allowed the Initiative and referendum procedures to become a forum for political, corporate, and religious influence in violation of the required independence of the initiative powers, the separation of church and state, and in so acting have undermined the separation of powers implicit in the guarantee of a republican form of government in Article IV, section 4 of the Constitution of the United States of America.(CP at 20-21)

7. As the number of legislative co-sponsors and supporters of I-1053 demonstrates, the Initiative power has become a forum for insider political gerrymandering of the political process to further partizan political, corporate (and possibly theological) interests in a manner contrary to the intent of the populists in adopting the initiative, referendum, and recall powers for the people to exercise independent of the legislature.(CP 20-21)

8. In both I-1053 and R-71, the people's independent powers have been employed by their sponsors to further a partizan legislative agenda and to afford corporate and religious interests undue influence on the laws and

constitutionally mandated political process of the State of Washington.(CP at 20-21, 24-28)

9. The effect of I-1053 is to suspend the power of taxation, violate the constitutionally mandated balance of power between the People, the Legislature and the Executive, and to introduce an era of the tyranny of the minority and to curtail basic funding necessary for the provision of essential public services and the continuity of government.(CP at 20-21, 24-28)

10. I-1053 is also an unconstitutional exercise of the initiative powers because it improperly endangers the funding and support necessary for the continuity of government and the functioning of essential State agencies and services.(CP at 20-21, 24-28)

11. On December 20 , 2010, plaintiff West filed a complaint for declaratory relief and relief in regard to I-1053.(CP 3-8)

12. On march 3, 2010, plaintiff West filed a motion for summary judgment seeking a declaration that I-1053 was unconstitutional(CP 15-28)

13. On March 4, 2011 the defendants filed a motion seeking to prevent West's motion fro being heard (CP at 42-45).

14. On March 11, 2010, the court held a hearing. Despite the circumstance that West had filed a motion for summary judgment. The Court entered an order refusing to consider plaintiff's motion in deference

to a later filed motion for judgment on the pleadings CP at 60, transcript of March 11, 2011.)

15. On April 15, 2011 a hearing was held and the court granted judgment on the pleadings to defendants without considering plaintiff's motion for summary judgment that the state had failed to respond to (CP 78). An Order was signed the same day. CP 79-80)

16. Plaintiff moved for reconsideration of April 25, 2011. (CP 81-110)

17. On May 12, 2011, the Court entered a judgment summary. (CP 111-113)

18. Plaintiff filed a notice of appeal on May 16, 2011. (CP 114-119.

19. On May 18, 2011 the Court issued a letter denying reconsideration

20. On June 22, 2011, at the direction of this Court, the Trial Court entered a final order. (CP at 124)

21. On February 9, 2011, the Plaintiff timely appealed from the Court's orders. (CP 358, 359-375)

ORDERS ON APPEAL

Appellant appeals from the following Orders:

The Order of March 11, 2011 (CP 60). The Order of April 15, 2011.
(CP 79-80) The Order of June 22, 2011 (CP at 124)

STANDARD OF REVIEW

The Standard of review of a Judgment on the pleadings is de novo. *Parrilla v. King County* 138 Wn. App. 427, (2007). Factual issues are reviewed under the substantial evidence standard and issues of law are reviewed de novo. *State v. McCormack*, 117 Wn.2d 141, 143, 812 P.2d 483 (1991).

ARGUMENT

I THE COURT ERRED IN DENYING STANDING WHEN UNCONTESTED ALLEGATIONS AND PLAINTIFF'S USE OF STATE PARKS, SERVICES, AND HIGHWAYS DEMONSTRATED AN INJURY IN FACT FAIRLY TRACEABLE TO THE IMPACTS OF I-1053, THAT WAS LIKELY TO BE REDRESSED BY A FAVORABLE DECISION

The Court erred in dismissing plaintiff's claims when an injury in fact was apparent in plaintiff's uncontested claims of his specific use of State Parks and Highways, and the reduced services and greater fees imposed for their use, that was fairly traceable to the impacts of I-1053.

Plaintiff's uncontested pleadings contain clear statements that plaintiff falls within a specific class of citizens paying fees to use the State highway system and State Parks. Both the State Highways and the Parks face reductions in maintenance and other services as a direct and proximate result of the budget constraints of I-1053.

As a member of the discrete class of those regularly using State Parks, plaintiff is directly impacted by the layoff of Park employees, reduction in maintenance and security services and by the new fees imposed to attempt to fund the Park system by means other than taxes.

Similarly, as a member of the class of licensed drivers, West is directly impacted by the reductions in maintenance and security on State

Highways, and by the augmented fees and tolls likely to be imposed as a result of the constraints of I-1053.

When plaintiff uses State Parks, now and in the future, he will be subject to greater fees, and is faced with dangers posed by lessened security and reduced maintenance of trails, bridges, walkways and facilities. Similarly when using the State Highways he will be faced with impacts from reduced maintenance and delay of necessary safety improvements directly traceable to the impacts of I-1053.

As just one example of injury in fact, due to reduction in State services directly traceable to I-1053, plaintiff is subject to reduced access to State government at almost every level, resulting from the closure of Department of Licensing branch offices and reductions in staff and services at virtually every other State agency he is required to deal with. Now, instead of having a convenient office to renew his drivers license, he has to travel several miles, and wait in line an average of over an hour just to speak with a DOL representative, and will likely be faced with greater fees imposed by the State and local governments as a result of their losing revenue from taxes..

These injuries and threats of future harm from similar and increasing reductions in State services are not conjectural, are linked to I-1053, and are

likely to be redressed by a favorable decision, and meet the requirements that 1) "the plaintiff must have suffered an 'injury in fact,'" 2) a "causal connection between the injury and the conduct complained of," and 3) a likelihood that the "the injury will be 'redressed' by a favorable decision."

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992)

Further, as the 9th Circuit has recently clarified, the threat of future harm may also satisfy the injury in fact requirement.

As many of our sister circuits have noted, the injury in fact requirement can be satisfied by a threat of future harm or by an act which harms the plaintiff only by increasing the risk of future harm that the plaintiff would have otherwise faced, absent the defendant's actions. We concur in this view. Once the plaintiffs' allegations establish at least this level of injury, the fact that the plaintiffs anticipate that some greater potential harm might follow the defendant's act does not affect the standing inquiry. *Krottner v. Starbucks*, 628 F.3d 1139 (9th Cir. Dec. 14, 2010), citing *Pisciotta v. Old National Bancorp*, 499 F.3d 629 (7th Cir. Aug. 23, 2007)

Obviously, the impacts of cutbacks in security and maintenance of State Parks, reduced police services, reduced traffic and Highway safety improvements, and reduced state services that plaintiff has already suffered will only increase over time if the current financial crisis continues, and the threat of future harm is not speculative, especially since many of the increases and reductions mentioned by plaintiff have already occurred.

Under these circumstances, the Court erred in dismissing plaintiff's complaint.

II THE COURT ERRED IN FAILING TO LIBERALLY CONSTRUE THE UNIFORM DECLARATORY JUDGMENTS ACT IN ACCORD WITH ITS REMEDIAL INTENT TO RESOLVE AN EXISTING CONTROVERSY OF SUBSTANTIAL PUBLIC IMPORTANCE.....

This case also involves an action brought for declaratory relief under RCW 7.24, the Uniform Declaratory Judgments Act.

Plaintiff maintains that the issue of whether I-1053 is constitutional is a matter of overwhelming and widespread importance, critical to the ability of the State to provide essential services, and to regulate and foster commerce trade and industry, and as such, the Court's power to decide this case is governed by the clearly established precedent of *Farris v. Munro*, 99 Wn. 2D 326, 662 P.2d 821, (1982). As the Supreme Court held in *Farris*...

Despite petitioner's failure to satisfy... standing requirements, he raised an issue vital to the state revenue process... Thus, the case presented issues of significant public interest that, by analogy to other decisions, allow this court to reach the merits.

The remedial nature of the UDJA also supports such a determination, in that the Legislature expressly declared RCW 7.24 to be a remedial statute.

This chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered. RCW 7.24.120

In addition to the legislature, the Supreme Court of the State of Washington has declared that liberal construction is required for such remedial statutes.

A liberal construction requires that the coverage of the act's provisions "be liberally construed and that its exceptions be narrowly confined." *Hearst Co. v. Hoppe*, 90 Wn.2d 123, 580 P.2d 246 (1978) Liberal construction of a statute "implies a concomitant intent that its exceptions be narrowly confined." *Mead Sch. Dist. No. 354 v. Mead Educ. Ass'n*, 85 Wn.2d 140, 145, 530 P.2d 302 (1975). *Miller v. City of Tacoma*, 138 Wn.2d 318, at 324, (1999)

Under the remedial provisions of Washington's Uniform Declaratory Judgments Act, a person whose rights, status, or other legal relations are affected by a statute may have any question concerning the construction of that statute determined by the court. *Branson v. Port of Seattle*, 152 Wn.2d 862 , 877, 101 P.3d 67 (2004).

Specifically, RCW 7.24.020 reads, in part, as follows:

A person . . . whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

In accord with the intent of the Legislature, this Court has determined that the UDJA is to be liberally construed and is designed to clarify uncertainty with respect to rights, status, and other legal relations. *DiNino v. State*, 102 Wn.2d 327, 330, 684 P.2d 1297 (1984).

This is especially necessary when the issue concerns matters of broad importance involving trade, industry and commerce, as is the case with the

The UDJA should not and can not in accord with a liberal construction require any showing of harm or damage for “any person” to compel his government to act openly as required by law.

Government acting unconstitutionally damages each citizen, and as such any member of the public has standing to challenge an unconstitutional limit on the State's power of taxation. This is especially necessary when the effect of an unconstitutional initiative has been to economically hamstring the State and compel budget decisions so draconian that a proliferation of litigation and demonstrations has resulted,

in combination with cuts to essential State services that endanger the continuity of government and the effective provision of social services.

In the Orders and Judgment of the Court erred in failing to construe the UDJA in accord with its remedial intent.

III THE COURT ERRED IN DENYING PLAINTIFF'S STANDING WHEN A LESS STRINGENT TEST WAS APPLICABLE, WHEN PARTICULAR INJURY HAD BEEN DEMONSTRATED, AND IN GRANTING A MOTION ON THE PLEADINGS WHEN APPELLANT'S ALLEGATIONS AND UNCONTESTED MOTION FOR SUMMARY JUDGMENT ESTABLISHED A CAUSE OF ACTION

This case involves an action brought for declaratory relief under RCW 7.24, the Uniform declaratory Judgments Act. Plaintiff maintained that the issue of whether the State's power of taxation is subject to unconstitutional super majority amendment by a citizen referendum was an issue vital to the State's revenue process, and as such, the Court's power to decide this case is governed by the clearly established precedent of *Farris v. Munro*, 99 Wn. 2D 326, 662 P.2d 821, (1982). As the Supreme Court held in *Farris*...

Despite petitioner's failure to satisfy... standing requirements, he raised an issue vital to the state revenue process... Thus, the case presented issues of significant

public interest that, by analogy to other decisions, allow this court to reach the merits.

The remedial nature of the UDJA also supports such a determination, in that the Legislature expressly declared RCW 7.24 to be a remedial statute.

This chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.

In addition to the legislature, the Supreme Court of the State of Washington has declared that liberal construction is required for such remedial statutes.

A liberal construction requires that the coverage of the act's provisions "be liberally construed and that its exceptions be narrowly confined." *Hearst Co. v. Hoppe*, 90 Wn.2d 123, 580 P.2d 246 (1978)

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Specifically, RCW 7.24.020 reads, in part, as follows:

A person . . . whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

In accord with the intent of the Legislature, this Court has determined that the UDJA is to be liberally construed and is designed to clarify uncertainty with respect to rights, status, and other legal relations. *DiNino v. State* , 102 Wn.2d 327 , 330, 684 P.2d 1297 (1984).

This is especially necessary when the issue concerns matters of broad importance involving trade, industry and commerce, as is the case with an initiative that controls the State's power of taxation and therefore also directly impacts the States revenue and budget procedures.

Even without relaxed standing requirements, appellant West has been particularly and specifically interested and involved in initiatives and their lawful scope for over 15 years, since the issue of the people's separate and independent powers was raised before the State Supreme Court in the I-602 case.

In the present instance the Court erred in granting judgment on the pleadings when appellant had filed a well supported Motion for Summary

Judgment, (CP at 15-28) which had not been denied or contested in any way by the respondents.

The party moving for Judgment on the Pleadings admits, for the purpose of the motion, the truth of every fact well pleaded, and the untruth of his own allegations which have been denied. *Trumble v. Wasmer*, 43 Wn. (2d) 592, 262 P. (2d) 538. In this case the uncontested facts include the following...

Plaintiff West is a citizen and a landowner in the State of Washington. He is a registered voter and is particularly impacted by specific budget and policy determinations that have been and will continue to be made by the State Legislature and State agencies in the absence of a constitutional process for levying taxes.

As shown in the declarations accompanying plaintiff's Motion for Summary Judgment, West pays sales, excise, and property taxes, drives on State roads, receives services from State and local agencies, and will be materially and substantially affected by the many specific alterations in State revenue and State and local Government directly and proximately resulting from I-1053 and the suspension of taxing power that it has mandated.

The Washington State Budget and Policy Center released an analysis of several Washington 2010 initiatives, including I-1053. According to the study, I-1053 "would tie legislators' hands as they deal with the continued

effects of the recession." The initiative, they said, would do this by requiring a public referendum vote or a super majority vote in the legislature along with a nonbinding public advisory vote. The requirements, according to the study, "would hamper public officials from making smart and rational decisions."

Plaintiff attested to having personally observed the effect of I-1053 on the Legislative and Executive departments of the government of the State of Washington, and the impact of the financial crisis precipitated by the terms of I-1053. These effects range from lessening environmental protections, attacks upon the alleged cost of government accountability, reduced funding of State Parks, changes in State agencies and State services, as well as reduced crime prevention and other police services.

West is particularly and specifically impacted by all of these effects which are the direct and proximate result of I-1053. West drives a vehicle on State highways, uses State Parks and waters, and employs the services of State Agencies, (including the DOL, DNR, the Executive Ethics Board, the Legislative Ethics Board, the DNR, and the DOE). West pays service fees has bought a \$30 pass to access State Parks, and is subject to sales tax and other charges that will be raised as a result of I-1053.

These are clearly not speculative or hypothetical interests or impacts.

Further, as the speech of governor Gregoire at the AWC Legislative Action Conference on February 16, 2011 noted, the financial crisis created by I-1053 is being employed by the State Executive as a basis for a radical restructuring of government, including the laws governing Public Records, SEPA and water quality. These too, will specifically and adversely impact the appellant.

In addition, as both a tax and fee payer, plaintiff West is directly and adversely impacted by the changes in State Government and in the State budget caused by I-1053.

In the 2011 Legislative session the impact of I-1053 was ever present in all of the decisions made by the legislature, which had the effect of promoting the advancement of bills curtailing the enforcement of environmental regulations and amending the Public Records Act. Both of these subjects directly and adversely impact West.

In addition, the budget constraints imposed by I-1053 were employed by the various Associations as a basis for the wholesale alteration of government along new and potentially totalitarian principles. (see CP at 106-111).

The additional fees likely to be imposed by the effects of I-1053, specifically the vehicle licensing increases and State Park fee increases will

directly and adversely impact West, who licenses a vehicle and uses the State Park system (CP at 83-111)

These increased fees imposed as a direct and proximate result of I-1053 grant standing to West under even the most restrictive standing analysis.(CP at 83-111)

All of these are specific and material impacts that demonstrate that plaintiff has standing in this case, especially since standing requirements are relaxed in matters involving issues of broad and overriding public interest. The vast and inarguable impacts of I-1053 justify a relaxed standing standard, and there can be no reasonable argument that either standard is met in this case.

The essence of taxpayer standing is that one's status as taxpayer is sufficient to challenge illegal government dispositions. Requiring a litigant to allege a particularized injury is no longer standing based on taxpayer status. Any taxpayer suit challenging an alleged illegal act must meet two requirements: "the complaint must allege both a taxpayer's cause of action and facts supporting taxpayer status." *Dick Enterprises, Inc. v. King County*, 83 Wn. App. 566, 572-73, 922 P.2d 184 (1996).

In *Barnett v. Lincoln*, 162 Wash. 613, 299 P. 392 (1931) a taxpayer brought suit alleging that a Port executed a contract without requiring a

bond from the other party as required by law. This court recognized taxpayer standing because "the risk of loss resulting from noncompliance or breach of the contract would fall upon the taxpaying public. The assumption of this risk constitutes a general damage." Id. at 622. The court noted when a municipal corporation violates the law "it is a fair presumption that every taxpayer will be injured in some degree by such illegal act" even if no pecuniary harm can be shown. Id. at 623. See also *State v. Morgan*, 131 Wash. 145, 148, 229 P. 309 (1924) (illegal expenditure of state funds constitutes sufficient harm to supply taxpayer standing because he loses "the benefit which he would otherwise have received . . ."); *State ex rel. Gebhardt v. Superior Court*, 15 Wn.2d 673, 680, 131 P.2d 943 (1942) ("[A] taxpayer may seek relief in equity against a public wrong which results in imposing an additional burden on the taxpayers.").

This Court should follow the long established precedent of this State to allow taxpayers to seek relief in matters concerning the unlawful expenditure of their funds.

To fail to resolve the issues surrounding I-1053 impacts not only the due process clause but the guarantee of republican, constitutional government specified in the federal Constitution. Without the ability to

redress the impacts of restructuring of government caused by facially invalid Initiatives like I-1053, the guarantee of a constitutional, republican government is meaningless.

In addition, the requirement of unique personal injury as argued by the defendants may not even properly be required for "Taxpayer" standing

A taxpayer must show special injury where he or she challenges an agency's lawful, discretionary act. *Am. Legion*, 116 Wn.2d at 7-8. Where a municipal corporation acts illegally, "it is a fair presumption that every taxpayer will be injured in some degree by such illegal act. *Barnett v. Lincoln*, 162 Wash. 613, 623, 299 P. 392 (1931). Here, the Taxpayers do not challenge a lawful discretionary act. Rather, they argue that the PUD lacks lawful authority to operate an appliance repair business. Thus, the Taxpayers are not required to demonstrate a unique injury. *State ex rel. Boyles v. Whatcom County Superior Court*, 103 Wn.2d 610, 694 P.2d 27 (1985).

But the PUD cites *Greater Harbor 2000 v. City of Seattle* for setting the "unifying theme on standing . . . that, for taxpayer status alone to be sufficient, there must be either some particularized injury to the taxpayer, or actual financial harm to the taxpaying public of which the plaintiff is a member." Appellant's Br. at 18. **We are unable to read this theme into *Greater Harbor*.** *Knightlinger v. Pub. Util. Dist. No. 1* 507, 119 Wn. App. 501 (2003) (emphasis added)

This Court should follow the reasoning of the Court of Appeals in *Knightlinger*, and reject the restrictive standing arguments asserted by the

defendants. Such a determination would be consistent with the guarantee of a republican government as well as the concept of taxpayer standing.

Citizen or "Taxpayer" standing is as ancient as democracy itself, and the graphe paranomon¹ and is a necessary element of any democratic state.

In Washington, his principle has long been recognized for over a century. As early as 1906, the Washington Supreme Court held...

But we think the better and more reasonable rule is established by the decisions of the courts of New York, Ohio, Indiana, Illinois, and Iowa, which hold the opposite doctrine, and maintain that when the question is one of public right, and the object of the mandamus to procure the enforcement of a public duty, the relator is not required to show that he has any legal or special interest in the result, it being sufficient if he shows that he is interested, as a citizen, in having the laws executed and the right enforced. *State ex rel Romano v. Yakey*, 43 Wash. 15, 85 P. 990, (1906). (further citations omitted)

As the attached determination of the Supreme Court of Alaska in *Citizens for efficient Government v. State* demonstrates, popular measures seeking to amend the Constitution of a State to require a super majority for the passage of bills should not even be allowed to waste the taxpayers funds attendant upon their certification for the ballot.

This precedent reveals that the circumstance that I-1053 was certified and allowed to be voted upon and published into "Law" was a

¹ Significantly, as the historian Hansen notes, succeeding Oligarchs suspended the graphe paranomon as democratic in its effects in 411, 404 and 317 B.C. Plaintiff sincerely hopes that the present day oligarchs in Washington are not successful in effecting a similar suspension of the UDJA in 2011.

serious departure from proper procedure- especially when this was not in accord with previous practice by the Secretary of State when other previous initiatives that would have amended the Constitution were summarily rejected and denied an opportunity to be voted upon.

CONCLUSION

By refusing to even review the facts and legal arguments contained in plaintiff's Motion for Summary Judgment and in granting judgment on the pleadings without considering the evidence of specific injury in fact contained in the actual pleadings, the trial Court erred in failing to grant basic due process of law as required under the 14th Amendment. (See *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969).) and in denying justice under the UDJA.

Had the Court reviewed the arguments and facts asserted by the plaintiff, and applied the UDJA in its proper role as a remedial statute designed to remove uncertainty such as that caused by an unconstitutional law, it would have reached a different conclusion.

The Judgment on the Pleadings entered by this Court was contrary to the ruling of the Commissioner of the Supreme Court in *Brown*, and the Order of Dismissal entered in this case should be vacated.

RCW 7.24.010 provides...

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. **An action or proceeding shall not be open to objection on the ground that a declaratory judgment or decree is prayed for.** The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree. (emphasis added)

In a variety of contexts, the Washington State Supreme Court has recognized that standing questions should be analyzed in terms of the public interests presented.

“Where a controversy is of serious public importance and immediately affects substantial segments of the population and its outcome will have a direct bearing on the commerce, finance, labor, industry or agriculture generally, questions of standing to maintain an action should be given less rigid and more liberal answer. *Washington natural Gas v. PUD No. 1*, 77 Wn.2d 94, 96, 459 P.2d 633 (1969); accord, *Vovos v. grant*, 87 Wn. 2D 697, 701, 555 P.2d 1343 (1976).

This case presents issues of significant statewide public interest that, in light of the remedial nature of the UDJA and black letter precedent, compels this court to reach the merits of the important issues presented. The posture of the respondents in this case was improper and acted to eviscerate the intent of the legislature in providing for a remedy under the UDJA in circumstances where an uncertainty in the rights, status and legal relations exists.

The issue of whether the initiative power of the citizens can be employed by legislators and corporations to cripple the State's revenue and powers of taxation is an archetype case of an existing case or controversy of broad public importance that requires swift and ultimate determination. At least for the purposes of the State's motion on the pleadings, the jurisdiction of this court is not reasonably disputed.

To paraphrase Justice Jackson in *Terminello v. Chicago*... The choice is not between order and the initiative process. It is between the initiative process with limits with order and anarchy without either. There is danger that, if the court does not temper its doctrinaire logic with a little practical wisdom, it will convert the initiative process into an economic suicide pact.

This Court should temper the doctrinaire illogic of the Superior Court that no one has standing to contest the economic destruction of the state budget and the ability of the State to provide essential State services with the practical wisdom that requires the judiciary to preserve the constitution and separation of powers from assaults both direct and covert.

Without such action on the part of the judiciary the governance of the State of Washington has been reduced to an economic suicide pact where the citizens are helpless to act to forestall the resulting irreparable harm to the public and the particular adverse impacts that they, like

appellant West, are already suffering as a result of the unconstitutional restrictions of I-1053.

It should not be necessary for a citizen to be assaulted in a State Park or State Highway due to lessened security or involved in a traffic accident to have standing to contest the direct cause of the lack of adequate staffing in our state Parks or appropriate security, maintenance and improvements in the State Highway system, especially when it is undisputed that they are and will continue to be specifically and adversely impacted by the increased user fees and reduced services mandated by the lack of adequate tax revenue created by I-1053..

RELIEF SOUGHT

In light of the foregoing, plaintiff respectfully requests the following relief:

That the dismissal be vacated and that summary judgment issue on plaintiff's claims and that a Declaratory Ruling issue under the seal of this Court declaring I-1053 unconstitutional as adopted, written and as applied, that an immediate injunction issue under the seal of this Court barring the enforcement or application of I-1053, and/or that a Writ of prohibition issue

under the seal of this Court barring the application or enforcement of I-1053.

Respectfully submitted February 28, 2012.


ARTHUR WEST

CERTIFICATE OF SERVICE

I certify that this document has been Served on and Emailed to counsel for the respondents at their address of record on or before February 28, 2012, 2011. Done February 28, 2012.


ARTHUR WEST